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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,467	03/09/2006	Kristi Pierce	46984.2.3	2975
22859 7590 05/07/2008 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET SUITE 4000 MINNEAPOLIS, MN 55402				
EXAMINER PHILLIPS, CHARLES E				
ART UNIT 3751		PAPER NUMBER		
MAIL DATE 05/07/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,467

Applicant(s)

PIERCE, KRISTI

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/88)
Paper No(s)/Mail Date 6/23/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Art Unit: 3751

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 rejected under 35 U.S.C. 102(b) as being anticipated by Diederich '702.

See Figs 1 - 2 where a toilet brush is stored in the toilet tank. The claim 7"opposed surfaces" are seen at 28 and 29.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diederich as applied supra, in view of Bui.

The latter teaches storage of a plunger and a brush in a tank. In light of this it would have been obvious to provide a plunger in storage in Diederich.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4 and 5 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant(s) regard as their invention. No

Art Unit: 3751

antecedent basis is found in claim 1 for "the interior of the cover portion". Re: claim 4, it is unclear what "folded" consists of as no plunger structure is recited i.e. no handle.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 2 above, and in further view of Tolbert.

It would have been further obvious to employ a collapsible plunger handle as taught by Tolbert in order to reduce the size of the required storage area.

Claims 8, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gandini in view of Bui.

As the latter teaches the storage of a brush and a plunger in a water closet tank, it would have been obvious to employ Gandini with a plunger in lieu of or in addition to the brush B. The holding device of Gandini

is seen at 22 and the cover is 24. Re: claim 10, Bui teaches such a plunger. The method of claim 12 is met here as well by the obvious use of claim 9, the structure of element 38 meets the term "broom clip" as it

holds the plunger handle 12.

Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being by anticipated. Maushund.

The molded rubber cup 1 meets the term "plunger cup" and is pivotally mounted to handle 10 and with element 8 detached, would appear to be capable of fitting "within a toilet flush tank."

Claim 13 is rejected on the ground of nonstatutory double patenting over claim 3 of U. S. Patent No. 6,883,189 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a method of storing a plunger in a toilet tank.

Art Unit: 3751

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, depending

on the resolution of the double patenting rejection supra.

Diederich '432 shows a brush supported in a toilet tank.

/Charles E. Phillips/

Primary Examiner, Art Unit 3751